

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

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August 30, 1967

CIRCULAR NO. A-76
Revised

Transmittal Memorandum No. 1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for acquiring commercial or industrial products and services for Government use

Transmitted herewith is a revision of Bureau of the Budget Circular A-76 dated March 3, 1966. It is issued to clarify some provisions of the earlier Circular and to lessen the burden of work by the agencies in implementing its provisions. A brief summary of the changes is attached.

There is no change in the Government's general policy of relying upon the private enterprise system to supply its needs, except where it is in the national interest for the Government to provide directly the products and services it uses.

We intend to keep the provisions of the Circular under continuing review. We anticipate that further changes will be desirable in light of experience gained from implementing the Circular's provisions, including the required reviews of existing Government commercial or industrial activities to be completed by June 30, 1968. We intend to give special attention to the adequacy of the guidelines contained in the Circular for such matters as comparative cost analyses; the circumstances under which cost differentials in favor of private enterprise are appropriate; and the use of contracts involving support services that require minimal capital investment.

We welcome your suggestions.

PHILLIP S. HUGHES
Acting Director

Attachments

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CIRCULAR NO. A-76
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TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for acquiring commercial or industrial products and services for Government use

1. Purpose. This Circular replaces Bureau of the Budget Circular A-76 issued March 3, 1966. It is issued to clarify some provisions of the earlier Circular and to lessen the burden of work by the agencies in implementing its provisions. The basic policies to be applied by executive agencies in determining whether commercial and industrial products and services used by the Government are to be provided by private suppliers or by the Government itself are the same as those contained in Circular A-76 dated March 3, 1966.

2. Policy. The guidelines in this Circular are in furtherance of the Government's general policy of relying on the private enterprise system to supply its needs.

In some instances, however, it is in the national interest for the Government to provide directly the products and services it uses. These circumstances are set forth in paragraph 5 of this Circular.

No executive agency will initiate a "new start" or continue the operation of an existing "Government commercial or industrial activity" except as specifically required by law or as provided in this Circular.

3. Definitions. For purposes of this Circular:

a. A "new start" is a newly established Government commercial or industrial activity involving additional capital investment of \$25,000 or more or additional annual costs of production of \$50,000 or more. A re-activation, expansion, modernization or replacement of an activity involving additional capital investment of \$50,000 or more or additional annual costs of production of \$100,000 or more are, for purposes of this Circular, also regarded as "new starts." Consolidation of two or more activities without increasing the overall total amount of products or services provided is not a "new start."

b. A Government commercial or industrial activity is one which is operated and managed by an executive agency and which provides for the Government's own use a product or service that is obtainable from a

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private source. The term does not include a Government-owned contractor-operated activity.

c. A private commercial source is a private business concern which provides a commercial or industrial product or service required by agencies and which is located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico.

4. Scope. This Circular is applicable to commercial and industrial products and services used by executive agencies, except that it:

a. Will not be used as authority to enter into contracts if such authority does not otherwise exist nor will it be used to justify departure from any law or regulation, including regulations of the Civil Service Commission or other appropriate authority, nor will it be used for the purpose of avoiding established salary or personnel limitations.

b. Does not alter the existing requirement that executive agencies will perform for themselves those basic functions of management which they must perform in order to retain essential control over the conduct of their programs. These functions include selection and direction of Government employees, assignment of organizational responsibilities, planning of programs, establishment of performance goals and priorities, and evaluation of performance.

c. Does not apply to managerial advisory services such as those normally provided by an office of general counsel, a management and organization staff, or a systems analysis unit. Advisory assistance in areas such as these may be provided either by Government staff organizations or from private sources as deemed appropriate by executive agencies.

d. Does not apply to products or services which are provided to the public. (But an executive agency which provides a product or service to the public should apply the provisions of this Circular with respect to any commercial or industrial products or services which it uses.)

e. Does not apply to products or services obtained from other Federal agencies which are authorized or required by law to furnish them.

f. Should not be applied when its application would be inconsistent with the terms of any treaty or international agreement.

5. Circumstances under which the Government may provide a commercial or industrial product or service for its own use. A Government commercial or industrial activity may be authorized only under one or more of the following conditions:

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a. Procurement of a product or service from a commercial source would disrupt or materially delay an agency's program. The fact that a commercial or industrial activity is classified or is related to an agency's basic program is not an adequate reason for starting or continuing a Government activity, but a Government agency may provide a product or service for its own use if a review conducted and documented as provided in paragraph 7 establishes that reliance upon a commercial source will disrupt or materially delay the successful accomplishment of its program.

b. It is necessary for the Government to conduct a commercial or industrial activity for purposes of combat support or for individual and unit retraining of military personnel or to maintain or strengthen mobilization readiness.

c. A satisfactory commercial source is not available and cannot be developed in time to provide a product or service when it is needed. Agencies' efforts to find satisfactory commercial sources should be supplemented as appropriate by obtaining assistance from the General Services and Small Business Administrations or the Business and Defense Services Administration. Urgency of a requirement is not an adequate reason for starting or continuing a Government commercial or industrial activity unless there is evidence that commercial sources are not able and the Government is able to provide a product or service when needed.

d. The product or service is available from another Federal agency. Excess property available from other Federal agencies should be used in preference to new procurement as provided by the Federal Property and Administrative Services Act of 1949, and related regulations.

Property which has not been reported excess also may be provided by other Federal agencies and unused plant and production capacity of other agencies may be utilized. In such instances, the agency supplying a product or service to another agency is responsible for compliance with this Circular. The fact that a product or service is being provided to another agency does not by itself justify a Government commercial or industrial activity.

e. Procurement of the product or service from a commercial source will result in higher cost to the Government. A Government commercial activity may be authorized if a comparative cost analysis prepared as provided in this Circular indicates that the Government can provide or is providing a product or service at a cost lower than if the product or service were obtained from commercial sources.

However, disadvantages of starting or continuing Government activities must be carefully weighed. Government ownership and operation of facilities usually involve removal or withholding of property from

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tax rolls, reduction of revenues from income and other taxes, and diversion of management attention from the Government's primary program objectives. Losses also may occur due to such factors as obsolescence of plant and equipment and unanticipated reductions in the Government's requirements for a product or service. Government commercial activities should not be started or continued for reasons involving comparative costs unless savings are sufficient to justify the assumption of these and similar risks and uncertainties.

6. Cost comparisons. A decision to rely upon a Government activity for reasons involving relative costs must be supported by a comparative cost analysis which will disclose as accurately as possible the difference between the cost which the Government is incurring or will incur under each alternative.

Commercial sources should be relied upon without incurring the delay and expense of conducting cost comparison studies for products or services estimated to cost the Government less than \$50,000 per year. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study will be directed by the agency head or by his designee even if it is estimated that the Government will spend less than \$50,000 per year for the product or service. A Government activity should not be authorized on the basis of such a comparison study, however, unless reasonable efforts to obtain satisfactory prices from existing commercial sources or to develop other commercial sources are unsuccessful.

Cost comparison studies also should be made before deciding to rely upon a commercial source when terms of contracts will cause the Government to finance directly or indirectly more than \$50,000 for cost of facilities and equipment to be constructed to Government specifications. Cost comparison studies should also be made in other cases if there is reason to believe that savings can be realized by the Government providing for its own needs. Such studies will not be made, however, if in-house provision of the product or service, or commercial procurement thereof, is clearly justified in accordance with other provisions of this Circular.

The determination as to whether to purchase or to lease equipment or to construct buildings or acquire their use under lease-construction arrangements involves a determination of the difference in costs under the alternatives, and the principles set forth in this Circular should be applied to the extent relevant in making such determinations.

a. Costs of obtaining products or services from commercial sources should include amounts paid directly to suppliers, transportation charges, and expenses of preparing bid invitations, evaluating bids, and negotiating, awarding, and managing contracts. Costs of materials furnished by the Government to contractors, appropriate charges for Government-owned equipment and facilities used by contractors and costs due to incentive or

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premium provisions in contracts also should be included. If discontinuance of a Government commercial or industrial activity will cause a facility being retained by the Government for mobilization or other reasons to be placed in a standby status, the costs of preparing and maintaining the facility as standby also should be included. Similarly, if such a discontinuance is expected to result in premature retirement of Government employees which will cause a significant increase in retirement costs to the Government, such increased cost should be added to the cost of procurement from commercial sources. Costs of obtaining products or services from commercial sources should be documented and organized for comparison with costs of obtaining the product or service from a Government activity.

b. For purposes of economy and simplicity in making cost comparison studies, generally agreed costs that would tend to be the same under either alternative need not be measured and included (for example, bid and award costs and operating costs under lease-purchase alternatives).

c. Costs of obtaining products or services from Government activities should include all costs which would be incurred if a product or service were provided by the Government and which would not be incurred if the product or service were obtained from a commercial source. The objectives should be to compute, as realistically as possible, the incremental or additional cost that would be incurred by the Government under the alternatives under consideration. In making such determinations it is important that recognition be given to the full amount of additional or incremental direct and indirect cost to be incurred in providing the products or services required. Under this general principle, the following costs should be included, considering the circumstances of each case:

(1) Personal services and benefits. Include costs of all elements of compensation and allowances for both military and civilian personnel, including the full cost to the Government of retirement systems, calculated on a normal cost basis, Social Security taxes where applicable, employees' insurance, health, and medical plans, (including services available from Government military or civilian medical facilities), living allowances, uniforms, leave, termination and separation allowances, travel and moving expenses, and claims paid through the Bureau of Employees' Compensation.

(2) Materials, supplies, and utilities services. Include costs of supplies and materials used in providing a product or service and costs of transportation, storage, handling, custody, and protection of property, and costs of electric power, gas, water, and communications services.

(3) Maintenance and repair. Include costs of maintaining and repairing structures and equipment which are used in providing a product or service.

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(4) Damage or loss of property. Include costs of uninsured losses due to fire or other hazard, costs of insurance premiums and costs of settling loss and damage claims.

(5) Federal taxes. Include income and other Federal tax revenues (except Social Security taxes) received from corporations or other business entities (but not from individual stockholders) if a product or service is obtained through commercial channels. Estimates of corporate incomes for these purposes should be based upon the earnings experience of the industry, if available, but if such data are not available, The Quarterly Financial Report of Manufacturing Corporations, published by the Federal Trade Commission and the Securities and Exchange Commission may be consulted. Assistance of the appropriate Government regulatory agencies may be obtained in estimating taxes for regulated industries.

(6) Depreciation. Compute depreciation as a cost for any new or additional facilities or equipment which will be required if a Government activity is started or continued. Depreciation will not be allocated for facilities and equipment acquired by the Government before the cost comparison study is started. However, if reliance upon a commercial source will cause Government-owned equipment or facilities to become available for other Federal use or for disposal as surplus, the cost comparison analysis should include as a cost of the Government activity, an appropriate amount based upon the estimated current market value of such equipment or facilities. The Internal Revenue Service publication, Depreciation Guidelines and Rules may be used in computing depreciation. However, rates contained in this publication are maximums to be used only for reference purposes and only when more specific depreciation data are not available. Accelerated depreciation rates permitted in some instances by the Internal Revenue Service will not be used. In computing the depreciation cost of new or additional facilities or equipment to be acquired if a Government activity is started or continued and in determining comparative costs under lease-purchase alternatives, appropriate recognition should be given to estimated residual or salvage values of the facilities or equipment.

(7) Interest. Compute interest for any new or additional capital to be invested based upon the average rate of yield for long-term Treasury bonds as shown in the current monthly Treasury Bulletin. The method of computation should provide for reduction in the capital investment to which interest is applied over the useful life of the asset on a straight-line basis.

(8) Indirect costs. Include any additional indirect costs incurred resulting from a Government activity for such activities as management and supervision, budgeting, accounting, personnel, legal and other applicable services.

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7. Administering the policy. Approved For Release 2001/08/07 : CIA-RDP84-00933R000300030015-2

a. Inventory. Each agency will compile and maintain an inventory of its commercial or industrial activities having an annual output of products or services costing \$50,000 or more or a capital investment of \$25,000 or more. In addition to such general descriptive information as may be appropriate, the inventory should include for each activity the amount of the Government's capital investment, the amount paid annually for the products or services involved, and the basis upon which the activity is being continued under the provisions of this Circular. The general descriptive information needed for identifying each activity should have been included in the inventory by June 30, 1966. Other information needed to complete the inventory should be added as reviews required in paragraphs 7.b. and c. are completed.

b. "New starts."

(1) A "new start" should not be initiated until possibilities of obtaining the product or service from commercial sources have been explored and not until it is approved by the agency head or by an assistant secretary or official of equivalent rank on the basis of factual justification for establishing the activity under the provisions of this Circular.

(2) If statutory authority and funds for construction are required before a "new start" can be initiated, the actions to be taken under this Circular should be completed before the agency's budget request is submitted to the Bureau of the Budget. Instructions concerning data to be submitted in support of such budget requests will be included in annual revisions of Bureau of the Budget Circular No. A-11.

(3) A "new start" should not be proposed for reasons involving comparative costs unless savings are sufficient to outweigh uncertainties and risks of unanticipated losses involved in Government activities.

The amount of savings required as justification for a "new start" will vary depending on individual circumstances. Substantial savings should be required as justification if a large new or additional capital investment is involved or if there are possibilities of early obsolescence or uncertainties regarding maintenance and production costs, prices and future Government requirements. Justification may be based on smaller anticipated savings if little or no capital investment is involved, if chances for obsolescence are minimal, and if reliable information is available concerning production costs, commercial prices and Government requirements. While no precise standard is prescribed in view of these varying circumstances a "new start" ordinarily should not be approved unless costs of a Government activity will be at least 10 percent less than costs of obtaining the product or service from commercial sources. It is emphasized that 10 percent is not intended to be a fixed figure.

A decision to reject a proposed "new start" for comparative cost reasons should be reconsidered if actual bids or proposals indicate

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that commercial prices will be higher than were estimated in the cost comparison study.

(4) When a "new start" begins to operate it should be included in an agency's inventory of commercial and industrial activities.

c. Existing Government activities.

(1) A systematic review of existing commercial or industrial activities (including previously approved "new starts" which have been in operation for at least 18 months) should be maintained in each agency under the direction of the agency head or the person designated by him as provided in paragraph 8. The agency head or his designee may exempt designated activities if he decides that such reviews are not warranted in specific instances. Activities not so exempted should be reviewed at least once before June 30, 1968. More frequent reviews of selected activities should be scheduled as deemed advisable. Activities remaining in the inventory after June 30, 1968, should be scheduled for at least one additional follow-up review during each three-year period but this requirement may be waived by the agency head or his designee if he concludes that such further review is not warranted.

(2) Reviews should be organized in such a manner as to ascertain whether continued operation of Government commercial activities is in accordance with the provisions of this Circular. Reviews should include information concerning availability from commercial sources of products or services involved and feasibility of using commercial sources in lieu of existing Government activities.

(3) An activity should be continued for reasons of comparative costs only if a comparative cost analysis indicates that savings resulting from continuation of the activity are at least sufficient to outweigh the disadvantages of Government commercial and industrial activities. No specific standard or guideline is prescribed for deciding whether savings are sufficient to justify continuation of an existing Government commercial activity and each activity should be evaluated on the basis of the applicable circumstances.

(4) A report of each review should be prepared. A decision to continue an activity should be approved by an assistant secretary or official of equivalent rank and the basis for the decision should appear in the inventory record for the activity. Activities not so approved should be discontinued. Reasonable adjustments in the timing of such actions may be made, however, in order to alleviate economic dislocations and personal hardships to affected career personnel.

8. Implementation. Each agency is responsible for making the provisions of this Circular effective by issuing appropriate implementing instructions and by providing adequate management support and procedures for review and followup to assure that the instructions are placed in effect. A copy of

the implementing instructions issued by each agency will be furnished to the Bureau of the Budget.

If overall responsibility for these actions is delegated by the agency head, it should be assigned to a senior official reporting directly to the agency head.

If legislation is needed in order to carry out the purposes of this Circular, agencies should prepare necessary legislative proposals for review in accordance with Bureau of the Budget Circular No. A-19.

9. Effective date. This Circular is effective on October 2, 1967.

PHILLIP S. HUGHES
Acting Director

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SUMMARY OF CHANGES IN BUREAU OF THE BUDGET CIRCULAR NO. A-76
AS REVISED AUGUST 1967

Paragraph 3 - Definitions

3.a. The definition for a "new start" has been split as between (a) a newly established Government commercial or industrial activity and (b) a reactivation, expansion, modernization, or replacement of an activity. These separate definitions have been provided so that different dollar limitations on capital investment and annual cost of production may be applied. There is no change in the dollar limitations applicable to newly established Government commercial or industrial activities. But the dollar limitations have been doubled for the category of "new starts" that are a reactivation, expansion, modernization, or replacement of an activity. The change is necessary in order to avoid applying the "new start" procedures to routine adjustments for handling existing workload. For example, the replacement of a single machine tool at a shipyard may easily add capital cost of more than \$25,000, or the addition of only 10 employees at relatively low grades would add more than \$50,000 per year to production cost. This type of change occurs several times a year at a large facility and, under the terms of the earlier Circular A-76, each such change would have to be treated as a "new start" with a detailed cost study and a special approval.

3.b. The definition of a Government commercial or industrial activity has been clarified. The earlier Circular, by definition, excluded a Government-owned-contractor-operated activity but the wording was not entirely clear. The change made clarifies the fact that a Government-owned-contractor-operated activity is not to be regarded as a Government commercial or industrial activity for purposes of the Circular.

Paragraph 4 - Scope

4.c. The words "professional staff" that were contained in the earlier Circular have been eliminated. Paragraph 4.c. is intended to exempt various kinds of staff advisory services which are so intimately related to the processes of top management and control of Government programs that the general provisions of A-76 favoring reliance upon commercial sources should not be applicable. The term "professional staff" was so broad that it could be interpreted to apply to a large variety of services which are commercially available and which are not necessarily related intimately to top management and control of Government programs. The change will clarify the meaning of this subparagraph.

Paragraph 6 - Cost comparisons

A change is made in the third unnumbered paragraph to make clear that if there is reason to believe savings can be realized by the Government providing for its own needs, cost comparison studies should be made before

deciding to rely upon a commercial source. However, the changed wording also makes it clear that cost studies will not be required if in-house provision of the product or service, or commercial procurement thereof, is clearly justified in accordance with other provisions of the Circular.

A new unnumbered paragraph has been added to provide guidelines for applying provisions of the Circular to purchase vs lease of equipment, and to construction of buildings vs acquisition under lease-construction arrangements. The paragraph requires a determination of the difference in costs under the alternatives, and application of the principles set forth in the Circular in making judgments in these areas.

6.a. A sentence has been added providing that if discontinuance of a Government commercial or industrial activity will result in premature retirement of Government employees, and will cause a significant increase in retirement costs to the Government, such increased costs should be added to the cost of procurement from commercial sources.

6.b. This is a new subparagraph. It provides that costs which would tend to be the same for both Government and industry need not be measured and included in comparative cost analyses (for example, bid and award costs and operating costs under lease-purchase alternatives). The change is made in the interest of economy and simplicity in making cost comparisons.

6.c. (Paragraph 6.b. in the earlier Circular). A sentence has been added to clarify the fact that the incremental method of costing is to be employed and to emphasize the importance of a realistic recognition of all such additional or incremental costs.

6.c.(1). (Paragraph 6.b.(1) in the earlier Circular). Some additional wording has been added to clarify, in connection with personal services and benefits, that the full cost to the Government of retirement systems should be included.

6.c.(6). (Paragraph 6.b.(6) in the earlier Circular). A sentence has been added to make clear that appropriate recognition should be given to estimated residual or salvage value of facilities or equipment in computing depreciation.

6.c.(7). (Paragraph 6.b.(7) in the earlier Circular). This paragraph has been rewritten to provide that the computation of interest for any new or additional capital to be invested will be based upon the average rate of yield for long-term Treasury bonds as shown in the current monthly Treasury Bulletin. Also, the method of computation suggested would provide for reduction in the capital investment to which interest is applied as the

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asset is depreciated. The purpose of the change is to clarify the rate and source of interest to be charged and to provide guidance as to the principal to which it is to be applied. The suggested rate is a readily available measure of the current cost of money to the Government and the provision for reducing the balance to which interest is applied is considered reasonable because the interest cost should not go on indefinitely.

6.c.(8). (Paragraph 6.b.(8) in the earlier Circular). A change in wording has been made to clarify that Government costs should include any additional indirect costs incurred for such activities as management and supervision, budgeting, accounting, personnel, legal and other applicable services.

Paragraph 7 - Administering the policy

7.b.(3). In the past there has been some misunderstanding about the cost differential in favor of private enterprise due to uncertainties relating to Government production costs, equipment obsolescence, and other factors, including the amount of capital investment involved. A sentence has been added to clarify the fact that the ten percent cost differential in favor of private enterprise, mentioned in this subparagraph, is not intended to be a fixed figure. The differential may be more or less than ten percent, depending upon the circumstances in each individual case.

Paragraph 8 - Implementation

A sentence has been added requiring agencies to furnish the Bureau of the Budget with a copy of their implementing instructions.

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